THE ADVISORY COMMISSION ON THE ORGANIZATION OF THE JUDICIAL DEPARTMENT

FINAL REPORT

DECEMBER 15, 1995

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PREAMBLE

Missouri is fortunate to have so many people and organizations working to improve its judicial apparatus, beginning with those who conceived and implemented the "Missouri Plan" a half century ago. Similar efforts continue to this day with the work of the *Gender Bias Task Force*, the enactment of *Missouri Supreme Court Rule 10.32*, providing ethics provisions for non-partisan judicial commissions, and the recent constitutional amendment creating the *Missouri Citizen's Commission on Compensation for Elected Officials*. These efforts provide the context for progressive change and the momentum to accomplish that change.

Reflecting on the work of those who have preceded us, the Advisory Commission on the Organization of the Judicial Department is mindful of the difficulty of the task entrusted to it to assist in the creation of a more efficient, effective judiciary, more responsive to the needs of Missouri citizens.

As Missouri stands poised on the threshold of a new millennium, many challenges and critical issues lie ahead. Chief among those challenges is using the

technology of the twenty-first century to bring the judiciary ever closer to the people of the state. The Commission is grateful for the opportunity to assist in that endeavor and hopes that this report will lead to further improvements in the administration of justice in Missouri.

CREATION

The Advisory Commission on the Organization of the Judicial Department was established by Executive Order 93-31 signed by Governor Mel Carnahan on August 19, 1993, and by Executive Order 94-13 signed on March 22, 1994. Copies of these Executive Orders are attached hereto as exhibits.

VISION STATEMENT

A judiciary responsive to the people of Missouri and their needs, organized to serve the public in the most efficient, fair, and cost effective way and dedicated to the higher goals of a fair, accessible, and trusted judicial process.

THE MISSION

The Executive Orders establishing the Advisory Commission on the Organization of the Judiciary directed the Commission to review, analyze, study, recommend, and report upon the constitutional and statutory provisions relating to the Judicial Department, including at least the following:

1. The allocation of judicial personnel and resources and a means of ensuring such proper allocation in the future, including the desirability of a unified trial court of general jurisdiction;

2. The current arrangement of judicial circuits and the means of ensuring a proper arrangement in the future, including provisions relating to venue;

3. The current functioning of the nonpartisan selection system for judges and improvements that should be made to said system, if any; and

4. Any other matters the Commission believes will be of benefit to the Judicial Department, including recommendations related to training, retention, removal and compensation of judges.

The Commission was further mandated to make its report, including any recommendations for constitutional, legislative, executive or judicial action, to the Governor, the General Assembly, and the Supreme Court as soon as reasonably possible.

THE WORK OF THE COMMISSION

The Advisory Commission on the Organization of the Judicial Department resulted from the efforts of many people who attempted to distill the best of myriad proposals for changes in Missouri's judiciary over the past few years. As a result, the Commission was established by proclamation of the Governor and was composed of seventeen members, five of whom were appointed by the Governor and three each of whom were appointed by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chief Justice of the Missouri Supreme Court and the Board of Governors of The Missouri Bar. This arrangement was provided for in Executive Order 93-31, noted above.

This Report is the product of a sixteen month process of review, analysis and study by the Commission. However, the Commission believes strongly that publishing this report should not be the end-point of this process. Rather, the Commission hopes that the recommendations contained herein will culminate in changes, by way of legislation or otherwise. Some proposals presented to the Commission were theoretically desirable but politically impossible. The Commission has worked hard to produce recommendations that are workable and that can be

enacted. Members of the Commission stand ready to help enact recommendations, if needed. By the same token, the Commission recognized that preparing for the long-term future requires citizens to think about issues that are not currently feasible but which will be part of a technologically sophisticated future. Thus, there are other recommendations the Commission hopes will help direct development of the courts for the longer term.

The Commission first met in Jefferson City on July 28, 1994. The Governor and Chief Justice addressed the Commission about their expectations and about the mission of the Commission. The first order of the Commission's business was to define the scope of its mandate and specify its mission. Commission members unanimously agreed to focus on its charge to put the interests of the average Missourian first and to work to find ways to make the judiciary more accessible, effective, and efficient for them. Every meeting of the Commission since that date has begun with a verbal reminder of that mission.

The next order of business was to define the constitutional and statutory provisions relating to the judiciary that should be explored. The issues supplied to us

by the Governor and the Chief Justice, along with the work of previous commissions, provided excellent guidance. Thus, the initial list of issues was quite comprehensive. The Commission's work has included study and analysis of court costs; jury costs, size, composition, eligibility, satisfaction and security; jury sentencing; how circuit clerks are selected; the single-tier judiciary concept; the Missouri Non-Partisan Court Plan; the adequacy of judicial salaries; the use of senior judges; the regional justice concept; the centralized fine collection center concept; the automatic disqualification of judge rule; trial de novo "appeals;" judicial education; and the use of non-partisan elections for judges.

To make sure that all these issues and topics would be explored as fully as possible, and to involve the public as much as possible, the Commission announced in early January, 1995, that it would hold seven public hearings around the state. These hearings were held in Cape Girardeau, St. Louis, Springfield, Kansas City, Jefferson City, St. Joseph, and Kirksville. Notices of the public hearings were sent to state agencies that are involved with the courts, as well as advocacy groups and legal service providers, court and bar associations, labor unions, chambers of commerce and citizens groups. The local news media in each location was also

informed of the hearing date and location, and each hearing received advanced media attention and coverage. In sum, every effort was made to hear from all interested groups, including the general public. As a result, the Commission heard from over one hundred witnesses regarding their perceptions of the state of the judicial department and its strengths and weaknesses. The Commission wishes to extend a public and heartfelt thanks to The Missouri Bar and especially to its Director of Programs, Christopher C. Janku, for helping to organize these public hearings.

In addition to the hearings, the Commission received testimony and evidence in other ways. The Commission was invited to present information and respond to questions in a number of settings, including meetings of the Associate and Probate Judges Association, the Missouri Association of Prosecuting Attorneys, the Circuit Judges Association and The Missouri Bar. Further, the Commission received quite a large amount of written testimony.

Subsequent to receiving this testimony, the Commission met in open session, both in committees and as a whole, several times. The debate has been spirited, and the meetings have focused on making recommendations which are both within its

charge and politically viable.

The Commission's recommendations for action immediately follows this introductory section. Each recommendation states the action that should be taken and the reasons the Commission came to the conclusions it did regarding each.

The recommendations fall into four general categories. The first recommends three changes in the way in which court costs are calculated and collected. (Recommendations 1,2, and 3). The second category includes six recommended changes regarding the use and management of juries. (Recommendations 5,6,7,8,9 and 10). The third category has four changes regarding judicial personnel. (Recommendations 15, 16, 18, and 19). The fourth category has four changes to enhance the effectiveness of courts and to enable them to become more service-oriented in the future. (Recommendations 4, 12, 13, and 17).

The Commission stands ready to assist the Governor, the Speaker, the President Pro Tem, the Supreme Court, and the Missouri Bar in accomplishing the actions recommended herein.

COMMISSION RECOMMENDATIONS

1. Court Costs: Special Purpose Fees Should be Eliminated and Should no Longer be Established

The Commission recommends that court costs should be assessed only for purposes which are reasonably related to the expense of the administration of justice and not for other purposes. Thus, for example, costs should continue to be assessed for court automation and law libraries in courthouses, but should be discontinued where used to underwrite special ventures not associated with the cost of the administration of justice, such as capital improvements, building operation and maintenance, training of personnel, or providing employee or victim retirement funds. Such fees attached to a case bear little or no relation to the actual costs of processing a litigant's case. They are unfair, because they assign to a special class, "litigants," the obligation to pay for benefits to the public at large. Further, they are arguably unreasonable impediments to the access to justice and in violation of the Missouri Constitution since the test for constitutionality under article I, Section 14 is whether the funds "are reasonably related to the expense of the administration of

justice," not "whether the use of the funds are reasonably related to the functioning of the circuit court." *Harrison v. Monroe County*, 716 S.W.2d 263,267 (M0. banc. 1986. (Holding unconstitutional court costs imposed to provide additional compensation for state prosecutors and county clerks, collectors, assessors, treasurers, auditors, sheriffs, recorders of deeds and public administrators.)

Accordingly, the Commission urges that the following special costs be eliminated and that the purposes presently funded by them be supported from general revenue sources through the normal legislative appropriation process: costs assessed for courthouse operation--Greene County (483.591 RSMo); for courthouse restoration--St. Louis City (478.401 RSMo); for law enforcement training (590.149 RSMo); and for prosecuting attorney training (561.765 RSMo). Also, amounts assessed as costs to fund sheriffs' retirements (57.955 RSMo); crime victims' compensation (595.045 RSMo); independent living centers (561.035); and domestic violence shelters (455.205 RSMo). While all are worthy of funding, it should be done by state and local governments, not by special assessment against persons taking advantage of their right to access the courts for they place too high a price tag on access to justice. Further, such costs add to the administrative burden on clerks of the court who have the present obligation to collect and disburse the

funds.

2. The Amount of Court Costs Should be Easily and Clearly Determined by Reference to one Chapter of the Missouri Revised Statutes with Unambiguous Terminology

The Commission recommends that Missouri's court costs statutes be recodified into one chapter of the Missouri revised statutes for convenient access and that they be redrafted, where necessary, to clearly and simply state the conditions under which court costs are to be assessed.

Court costs and fees are presently located in many Missouri statutes. This is a confusing and inefficient way to present them to court clerks, the bench, bar and public. Court costs should be codified into one chapter entitled "Court Costs" with sections and subsections devoted to each court division and according to whether a case is a civil or criminal one. A single location will help ensure that costs to be assessed will not be overlooked and that new or revised fees or charges are quickly discovered.

Further, court cost statutes should be simple and easy to understand by attorneys, court personnel, and the public. Many are not and contain unclear qualifiers open to being interpreted in different ways. As a result, it may be difficult for court clerks to decide the amount of costs to assess and for judges to resolve disagreements regarding the proper amount due. This lack of clarity results in a lack of uniformity in application and to unreasonable assessments. The Commission, therefore, believes that the General Assembly should revise the language of the statutes toward simplification and clarity.

3. Court Costs Should be Paid Into a State General Revenue Account and Disbursed by the State as Provided by Law

The Commission recommends that court clerks be relieved of the responsibility for disbursing court costs into individual funds. Under the present system, court clerks are required to disburse money collected into six separate state funds, ten funds maintained by the county, and to various agencies and individuals for services rendered (e.g. witness fees, out-of-county sheriff fees, etc.). This is an unnecessary, time consuming, complex, cumbersome, and formidable task. Its

complexity is vividly illustrated in a chart entitled, *Court Costs and Fees*, attached to this document. Instead, clerks should simply be required to deposit all court costs money into a state general revenue account. The state would then allocate the money received from the circuit courts into the special funds as required by law. In the alternative, the court clerks could deposit the money that will be disbursed state-wide into the state general revenue account and deposit money that will be disbursed locally into the county general fund account. The state and county would then disburse the money as required by law. The allocation and disbursement to special accounts by the state, or the state and county, would be a relatively easy matter since the process could be automated.

The Commission recognizes that the actual collection of court costs assessed is also a problem for the judicial system. The Commission recommends that the legislature make this matter a high priority and provide an effective means for the aggressive collection of court costs. Such legislation, coupled with implementation of the Commission's recommendation that the state establish centralized fine collection (see Commission Recommendation Number 12) will provide more revenue and help ensure a more firm footing for the judicial system.

4. Trials De Novo from Decisions of Associate Circuit Judges Should be Eliminated

The Commission recommends elimination of the statutory right to trials de novo from judgments rendered by associate circuit judges. Such a prerogative currently exists, for example, from judgments rendered by associate circuit judges in Small Claims Court cases, in civil cases where the petition seeks damages not in excess of $5,000.00, in Forcible Entry and Unlawful Detainer actions, and Landlord-Tenant cases. V.A.M.S. Sections 482.365; 512.180; 534.060; 534.110.

The Commission believes that the present provision allowing for a trial de novo from decisions of associate circuit judges is an unnecessary waste of judicial resources and creates an unnecessary burden on court dockets. Furthermore, the provision sends the wrong message to the public concerning the quality of associate circuit judge decisions. Trials de novo are simply out-of-date vestiges of an earlier era when many lower-tier judges were not attorneys. In that context, a new trial conducted by a legally trained judge made sense. Associate circuit judges are

competent and qualified trial judges. Consequently, their decisions should receive the same respect as the decisions of circuit judges. This fact has already been recognized by the presiding judges of many circuits who have assigned de novo "appeals" to associate circuit judges and by the General Assembly which created legislation abolishing the right to de novo trials in misdemeanor cases. L. 1978, H.B. No. 1634, eff. Jan. 2, 1979.

As to Small Claims Court, the Commission not only recommends the elimination of a trial de novo in the Circuit Court, it also recommends the elimination of any appeal. Both the trial de novo appeal or an appeal to the Circuit Court frustrate the philosophy of the Small Claims Court as a "peoples court" where a person in an informal proceeding without rules of evidence can have a dispute of $3,000.00 or less decided in a prompt manner without endless and time-consuming appeals. Trials in Small Claims Court proceed in an informal and summary manner (V.A.M.S. Section 482.310(3) Supp.), but when the case is heard de novo in the Circuit Court they are governed by formal rules of evidence (V.A.M.S. Section 482.365(2) Supp.). This frustrates the legislative goal that small claims matters should proceed under expedited, less formal procedures and, since results following

the de novo proceedings are often different, presents a poor image of the judicial system to the public.

Furthermore, anecdotal evidence suggests that when a plaintiff is given an award in Small Claims Court, a trial de novo or an appeal from the Circuit Court judgment is filed by the defendant for purposes of delay and as a bargaining chip for settlement of the case at an amount less than the award. This tactic coupled with the defendant's hiring an attorney to handle the appeal often makes for an uneven playing field in these small claims cases.

In modern practice many cases are disposed of through arbitration for large sums of money without any appeal. The Commission believes that the Small Claims Court judge is able to perform a similar function in these small claims cases and his or her quick decision without any right to appeal would serve the system of justice much better.

The Commission, therefore, recommends that legislation be enacted precluding an appeal from a Small Claims Court judgment and that V.A.M.S.

Section 482.335 be amended to provide that the clerks who are now obligated to explain to the litigants the procedures and functions of Small Claims Court and assist them in filling out forms, also advise them that the procedure is not appealable either by the plaintiff or the defendant and that if an appealable judgment is desired they may proceed under Associate Division Chapter 517 procedures with the case to be placed upon the jury docket conditioned upon the payment of the required fees for proceeding in that manner. The Small Claims Court summons should also inform the defendant that a Small Claims Court judgment may not be appealed by either the plaintiff or defendant and that the defendant may remove the case to the Associate Division for trial by jury under more formal Chapter 517 procedures, provided the defendant files a written request for such removal within 15 days of service of the Small Claims Court summons and petition with the payment of the required fees for proceeding in that manner.

5. The Minimum Age Qualification for Jury Service Should be Eighteen

The Commission recommends that the minimum age qualification for serving as a juror be reduced from 21 years of age to 18. Missouri is only one of two states

that still requires that a person be twenty-one years of age for jury service. The Commission believes that if eighteen year olds are mature enough to vote for members of the General Assembly who enact the state laws, the Governor who has authority to enforce such laws, and are mature enough to defend their country, they are adult enough to participate as jurors. Further, a change to eighteen would be consistent with their present right to serve on juries in the federal court system and in the overwhelming majority of states that allow them to do so. Eighteen year old Missouri citizens should not be denied this important right provided to persons of similar age in other states.

In addition, lowering the age to eighteen would also provide significant administration benefits to counties which make use of computer database voter lists from which random juror selection occurs. Presently, those counties have to delete from the databases all persons under the age of twenty-one, a labor intensive endeavor.

6. Automatic Disqualification or Excuse from Jury Service Based upon a Person's Profession or Occupation Should be Eliminated

The Commission recommends that Missouri no longer automatically disqualify or excuse persons, upon request, from jury service merely because they are members of certain professions or occupation groups. Disqualification presently exists with respect to licensed attorneys and judges. V.A.M.S. Section 494.425. Automatic excuses presently can be obtained upon request by clergymen, physicians, osteopaths, chiropractors, dentists, pharmacists, and police officers. V.A.M.S. Sections 494.430 and 494.431.

In the Commission's view, jury service is an obligation and privilege of citizenship from which no eligible citizen should be disqualified or exempt. All persons, regardless of profession or occupation should, therefore, be entitled to the opportunity to serve and to not be able to decide for themselves when to assume the responsibility. The inability to serve and the ability to be excused upon request is also counter to the notion that a jury should be drawn from a fair representative cross-section of a community, an essential component of the Sixth Amendment guaranty

of trial by impartial jury. *Taylor v. Louisiana,* 419 U.S. 522 (1975) (*See also, V.A.M.S. Section 494.400).* The ability to be excused upon request contributes substantially to reducing a representative jury since it is likely that those who can avoid jury service will do so. *Duren v. Missouri*, 439 U.S. 357 (1979). Furthermore, the existence of the disqualification and exceptions from jury service to certain professionals not only reduces the inclusiveness and representativeness of a jury panel, it places a disproportionate jury service obligation on other professionals and non professionals.

This recommendation is not intended to suggest that attorneys, judges, clergymen, physicians, osteopaths, chiropractors, dentists, pharmacists, or police officers may not be excused from jury service for other reasons. Requests to be excused may be advanced by them based upon the fact that their absence from their professional activities during the time of service may materially and adversely affect the public safety, health, welfare or interest; or may impose an extreme hardship to them. In such cases, however, the excuse would have to be one granted by the court and only if good cause were shown. V.A.M.S. Section 494.430. In addition, such persons may be subject to peremptory challenge or challenge for cause at trial. For

example, the Court should presume that cause exists at trial if the case is one involving the professional's occupational specialty since he or she may have an unfair ability to influence other jurors or supply specialized information to them not in evidence.

7. State and Local Government Should Work Together to Provide for the Protection of Jurors

The Commission recommends that safeguards be designed to protect jurors from harm and coercive attempts to influence their decisions.

The Commission makes this recommendation because it is evident that jurors ought to be insulated from violence and other intimidation. Notwithstanding, jurors report that certain defendants or their sympathizers have intimidated them during the trial through threats of violence and the coercion has influenced their verdicts and their willingness to serve on other juries. The intimidation has taken many forms, including actual acts of violence and implied threats, such as harsh staring or mean looks; and coercive telephone calls by unidentified callers. While in some cases

these reports are based upon speculation that the intimidation is tied to the defendant, nonetheless the coercion is psychologically real to the jurors and has affected their deliberations and decisions.

At a minimum, the General Assembly and county commissioners, in consultation with the Office of State Courts Administrator, are urged to establish the following jury safeguards as priorities and provide funding for them so that one or more may be used when called for by a trial judge under the circumstances of a particular case: (1) extra security personnel; (2) law enforcement personnel escorting jurors to and from the courthouse; (3) courthouse metal detectors; and (4) the use of anonymous juries (prohibiting the disclosure of the names and addresses of jurors at any time during the judicial proceedings and after the trial).

To guard against unnecessary use of any of these safeguards, trial judges should only allow their use for the protection of jurors when "the seriousness of the charges, the extensive pretrial publicity, or the defendant's willingness to interfere with the judicial process place the safety of jurors in jeopardy." *United States v. Barnes*, 604 F.2d 121 (2d Cir. 1979), cert. denied, 446 U.S. 907 (1980).

8. If Feasible, the Maximum Time that Persons are Called Upon to be Present at the Courthouse to Perform Jury Service Should be Two Days or the Completion of One Trial, Whichever is Longer

The Commission recommends the adoption of legislation regarding jury service that ensure, to the extent that county population permits, (1) that summoned persons do not have to appear at court for prospective jury service for more than two days; and (2) that such persons selected for jury service do not have to serve longer than the completion of one trial.

The Commission's endorsement of the concept of "Two days-One Trial" is aimed at reducing citizen dissatisfaction with the court system. One source of dissatisfaction, is citizen frustration over being summoned and released after many days without being chosen to serve. This exacerbates the economic and personal hardships attendant upon being summoned for jury duty and leads to complaints that jury duty is a waste of time and a major inconvenience.

The idea is not a new one. It was a recommendation made by *The Missouri*

Supreme Court Committee on Standards Relating to Juror Use and Management (Committee Note to Standard 5: Term of and Availability for Jury Service). The standards were approved by the Missouri Supreme Court in July 1993 and are recommended by the Supreme Court to the circuit courts which may or may not choose to adopt them.

To date, it appears that only the City of St. Louis and St. Louis County have chosen to do so. Other large population counties should do so as well, if feasible. Toward that end, the Commission recommends that the Office of State Courts Administrator be directed by the Missouri Supreme Court to conduct a feasibility study regarding application of the idea throughout the state and report on the matter to the Court. All circuits where "Two Days-One Trial" is achievable and practicable should then be directed by rule to implement the concept. Other circuits should be required to apply the shortest possible achievable, feasible, and practicable alternative reported for that circuit by the Office of State Courts Administrator--"Three Days-One Trial," "Four Days-One Trial," etc.

9. The Size of Juries in Civil Cases Should be Reduced to a Maximum of Eight Persons

The Commission recommends that the Missouri Constitution and pertinent statutory provisions be amended to provide that juries in civil trials may consist of a maximum of eight persons. This recommendation is not intended to change present Missouri provisions requiring a three-fourths verdict in civil cases.

The Missouri constitutions of 1865 and 1820 provided merely that the right of trial by jury should be inviolate. At general elections, the people of the state have altered the original statement to add further language which specifies that a jury for the trial of courts not of record may consist of less than twelve persons, that less than a unanimous verdict is allowable in civil cases (2/3 concurring in courts not of record; 3/4 concurring in courts of record), and which authorizes waiver of trial by jury by criminal defendants. The Commission believes that the people of the State should be given the opportunity to speak on reducing the size of a jury in a civil case to eight as well.

Opposition to the concept of reducing the size of juries in Missouri to a

number less than twelve centers on two main concerns. First, the right to a twelve-person jury is said to be a fundamental right; one which is deeply rooted in our heritage. Second, any number less than twelve is said to be not the "correct size" because of the danger (1) that the jury will be less representative of the community from which it is drawn; and (2) that jury verdicts will be less predictable because of the disproportionate effect of having a strong or aberrant juror on the jury.

Similar arguments were advanced to the United States Supreme Court back in the 1970's in a series of cases addressing challenges to the use of juries of less than twelve members and to non-unanimous verdicts. Notwithstanding, the Court upheld the use of unanimous six-person juries in criminal and civil cases and authorized non-unanimous verdicts in criminal cases. In doing so, the Court concluded that the concern that reducing the number of jurors from twelve to six would reduce the cross-sectional representation of the jury was "unrealistic" so long as whole classes of persons were not arbitrarily excluded from jury service. *Williams v. Florida*, 399 U.S. 78, at 102. Further, the Court held that it was self-evident that there was no relation between jury size and jury decisions. Id. at 100-01. To the contrary, the opinion cited six "experiments" demonstrating "no discernable

difference" between the results reached by the six versus twelve person juries. Id.

Many states agreed and have reduced the size of their juries, joining the majority of federal districts which did so. Still, there are detractors who cite statistical studies and academic literature supporting their bias in opposing such reductions.

It seems to the Commission that the debate is a political one which will go on indefinitely if it is allowed to do so and that the matter is, therefore, best left to the people of the State to decide. The discussion could then focus on other equally important issues such as the significant cost savings which would enure to counties and the State and the efficiencies which would result from the reduction. The cost savings could enable jurors to be paid a larger per diem amount then they are presently paid, the subject of Commission Recommendation Number 11 , since the number of jurors to be paid in civil cases would be reduced by at least one-third. The efficiencies include shorter trials and a less frequent obligation for individual persons to serve on juries.

10. Jury Sentencing in Criminal Cases Should be Eliminated

The Commission recommends eliminating the role of the jury in sentencing except for those cases in which the death penalty is sought.

The Commission recommends elimination of jury sentencing in most criminal cases for four reasons. First, with the exception of capital punishment cases, juries are not provided with the information needed for rational penalty decision-making. Thus, jurors are asked to give an appropriate punishment within a rather broad range without learning about the issues that common sense would suggest one should know before sentencing: for example, substance abuse; work and social history; or the rules of probation and parole, including release under strict supervision. Notwithstanding the lack of needed information, a jury's decision in regard to punishment is binding upon the court to a significant extent, for the "term of imprisonment imposed [by the court] cannot exceed the term declared by the jury." The only exception that exists to this binding effect is when the jury imposes a term "less than the authorized term for the offense," and then it can only be raised to the "lowest term provided for the offense." V.A.M.S. Section 557.036. It is no wonder that many jurors feel

betrayed by the system when they are criticized by their neighbors for providing a light sentence to a hardened criminal. Second, the current rule bestows a benefit to persons convicted by allowing their character and sordid past to be hidden from the jury. Third, it is incompatible with the movement toward sentencing guidelines for judges. Jurors will not be able to apply guidelines that include all the circumstances needed to assess punishment, including the criminal history of the defendant. It simply makes no sense to allow jurors to do what judges are precluded from doing--rendering disparate sentences for similar crimes to persons with similar histories. Fourth, the rationale for the rule no longer exists: distrust of English judges during colonial times by persons who had been tried and sentenced in religious and political prosecutions. It is simply an out-of-date vestige of the past.

The General Assembly has already created exceptions to the general rule that juries assess punishment by authorizing the court to do so (1) where "the defendant requests, prior to voir dire, that the court assess the punishment in case of a finding of guilt;" or (2) where the "state pleads and proves the defendant is a prior offender, persistent offender, dangerous offender, or persistent misdemeanor offender;" (3) where the jury "finds the defendant guilty but cannot agree on the punishment to be

assessed"; (4) where the court "finds the defendant is a `persistent sexual offender;'" or (5) where the court finds that the defendant is prior offender or persistent offender in intoxication-related traffic offenses. V.A.M.S. Sections 557.036, 558.018, and 577.023. The Commission believes that the legislature ought to cease piecemeal progress and join the vast majority of jurisdictions that place all punishment assessment where it belongs--in the hands of judges who can obtain all of the information necessary for an appropriate assessment. The sole exception would be death penalty cases.

The exception for those cases in which the death penalty is sought is based upon Missouri statutory and case law which provides a separate penalty phase hearing to determine punishment if guilt is determined by the jury. During the penalty phase, the jury will hear additional evidence in extenuation, mitigation, and aggravation of punishment and will, therefore, be provided with the information needed for rational death penalty decision-making such as the defendant's character and past conduct. In such cases, therefore, the jury will be provided with substantially the same information the judge would obtain in a pre-sentencing report in a non-capital case and is not hampered in its task.

11. Jury Compensation Should be Increased Substantially

The Commission recommends that the statutorily mandated $6.00 minimum provided for in V.A.M.S. Section 494.020, should be increased to $12.00. The $6.00 amount is much too low and should be adjusted due to inflation and cost of living increases that have occurred since the $6.00 minimum was legislated. As a result, jurors whose employers do not continue to pay their salary while they serve and those who do not own their own businesses often complain of financial hardship and seek to be excused from jury service, reducing the representativeness of the jury pool.

As shown below, the amount recommended is the average amount which is actually being paid by counties (which are authorized to pay additional compensation pursuant to V.A.M.S. Section 494.455 if they desire to do so) and, to the Commission, is an amount which, although still too low, is a significant step toward a fair and equitable per diem rate. The table is a summary of per diem jury service fees paid for the calendar Year 1993 and was prepared by the Court Services Division, Office of State Courts Administrator. The summary was based upon a

survey conducted by that office and the responses of 92 counties, representing 80% of all counties in the state.

Per Diem Jury Service Fees

1993 Calendar Year

1) 32 counties paid the $6.00 minimum

2) 1 county paid $7.00

3) 1 county paid $8.00

4) 2 counties paid $10.00

5) 16 counties paid $12.00

6) 6 counties paid $14.00

7) 8 counties paid $15.00

8) 4 counties paid $18.00

9) 19 counties paid $20.00

The average per diem amount paid is $12.08.

Inasmuch as local conditions may compel a county to authorize a higher per diem amount, counties that desire to increase the compensation beyond $12.00 should still

be authorized to do so. V.A.M.S. Section 494.455. Further, the Commission recognizes that $12.00 is too low and recommends that it be raised further if funds become available.

12. A Centralized Fine Collection Division Should be Established

The Commission recommends that a fine collection bureau be established for the central collection of fines for specified motor vehicle, conservation and water patrol violations in which the individuals charged with the violations plead guilty. This recommendation does not cover centralized fine collection for all violations. Local courts would continue to process and collect fines for severe violations that are of significant concern to the public residing in the locality, including (1) driving while intoxicated and other violations involving the use of alcohol; (2) driving while a license has been suspended or revoked; (3) offenses involving an accident; and (4) driving more than 30 mph over the speed limit.

Integral to the proposal is the establishment of a standardized fine schedule by Supreme Court Rule to be applied statewide. The schedule would be based upon

recommendations from a committee of judges appointed by the Missouri Supreme Court and reviewed and adjusted for inflation upon such advice each January. The first schedule and each revision would take effect as written unless annulled or amended in whole or in part by action of the General Assembly. The legislative review process would, thus, be the same as presently exists for the review of Supreme Court Procedural Rules. (Article V, Section 5 of the Missouri Constitution provides that "...Any rule may be annulled or amended in whole or in part by a law limited to the purpose.")

The Commission believes that this idea makes a good deal of sense and benefits citizens by embodying fairness considerations--equal fines for equal violations committed around the state, set at a dollar amount that is equitable for the violations involved. It also embodies convenience considerations. When an individual receives a ticket he or she would know the offense charged, the fine and costs involved, and when a response to the charge was required to be made. The fine could then simply be mailed to the Center. Further, the concept should benefit judges and court clerks by freeing clerks to do other tasks and reducing the number of contested cases (other states that have adopted this idea have seen a reduction in contested cases). It would also benefit prosecutors by reducing courtroom time. Finally, it would benefit law enforcement

personnel, because the public would perceive that it is being treated equitably, because violation information would be available faster and in an easier form than is presently obtainable, and because cases would be processed more expeditiously.

The Center could also more effectively pursue the collection of unpaid fines through tax withholding and cooperative efforts with other state agencies.

13. A Justice Center Should be Established in One of the Judicial Circuits as a Prototype for Possible Adoption Throughout the State

The Commission recommends that the Office of State Courts Administrator be encouraged to work with the Governor's office, the General Assembly, the Missouri Supreme Court, and interested judicial circuits toward establishing at least one prototype of a justice center in Missouri to handle serious cases filed in the circuit.

Historically, trial courts in Missouri developed as county-based operations. For that reason, courtrooms, judicial offices, and judicial support services are located in county courthouses, and counties are responsible for providing courtrooms, office space,

utilities, and office equipment. These courts have evolved to the point where they can no longer be considered merely local courts of local communities. They are significant segments of a state court system, a system heavily funded by state funds and run by state employees. Thus, for example, the State of Missouri presently pays the salaries of all judges, court reporters, circuit clerks, and other court clerks throughout the state. It also assumes most costs of the travel, training, bonding and legal defense of these people; and provides central administrative support for the local courts. Most recently, it has assumed the cost of supporting the purchase and maintenance of computer hardware and software for court automation.

Complete evolution into a state court system needed for the twenty-first century will be extremely difficult if the county-based courthouse model is strictly followed. The model contains many inefficiencies that would not be included if the system were to be designed today based upon present levels of mobility and technology. For example, in multi-county judicial circuits where there is only one circuit judge, each county maintains a large circuit courtroom with attendant maintenance and utility costs. This is so, even though it is physically impossible for the circuit judge to be in more than one location at a time. Also, public defenders, probation and parole officers, attorneys, and

others involved in the administration of justice have to travel extensively to conduct business because courts, jails, county-based auxiliary services and court records are in each county of the circuit. Further, many courthouses and jails throughout the state do not meet federal guidelines of the Americans with Disabilities Act or do not meet the national standards of professional organizations. The poor condition of many courthouses and jails leads to a lack of respect for the justice system and exposes state and local government to legal liability.

The present organizational and physical structure can no longer be justified by the need for the public to have access to the courts or arguments based upon 19th century legal practice. The automobile and telephone, invented after the county-based court-system was established, have made access across county lines quite easy. Further, today's age of information and communication technology is making access even easier, providing the ability to file court cases electronically from remote locations; inquire by telephone or computer modem about the status of a court case, a child support payment, or the need to appear for jury duty; and pay traffic tickets from ATM machines. Missouri's twenty-first century court system should be responsive to the opportunities created by these technologies and the changed needs of its citizens.

The Commission believes that a promising prototype for the future exists with the "justice center," a location in a circuit where all jury cases would be tried, serious non-jury cases would be tried, and all work related to those cases would be done. Other more minor matters, such as small claims and traffic cases, would continue to be heard in the county courts of the circuit since they lend themselves to volume handling on the local level.

The justice center idea is not purely an academic one. It has already excited the interest of a number of judicial circuits in Missouri and has been the subject of discussion toward possible implementation in the 28th Circuit consisting of Barton, Cedar, Dade and Vernon Counties. Other circuits, likewise, see it as a benefit for its citizens and eagerly await its definition and implementation. It is, therefore, a concept that deserves the serious consideration and enthusiastic support of the executive, judicial and legislative branches of government.

The justice center contemplated would contain the state of the art information and communication technology described in the *Electronic Courts 2004 Project: The Missouri Court Automation Project* which, among other things, would allow lawyers,

litigants and other citizens to be able to access court information without being in the courthouse and to enable litigants and their attorneys to file documents electronically and to communicate with the court via videoconferencing, electronic mail, FAX and other electronic means. Similarly, the advanced technology envisioned would allow courts to provide for video arraignments and hearings, to instantly communicate scheduling changes and cancellations to litigants and their attorneys (preventing needless trips to the courthouse and the expense associated with it), and to implement computer-based scheduling and docket management systems to provide a more efficient use of judicial time and resources.

The justice center would also provide the physical plant needed for a circuit court and regional jail, containing, for example, offices for a prosecuting/district attorney, public defender, and probation and parole staff. If carried out, the center could be expanded to provide additional community services as well, such as dispatching for 911 and fire and ambulance services.

The Commission believes that the transition from county-based operations to centralized operations is inevitable and desirable since it will better meet the needs of

the people of the state. Planning should, therefore, start to ensure that the transition is well thought out and financially viable. Accordingly, the Commission recommends that the Office of State Courts Administrator, the Governor's Office, the General Assembly, the Missouri Supreme Court, and interested judicial circuits all work together toward establishing at least one prototype of a justice center in Missouri and that in doing so they identify and pursue sources of funding, such as grants and legislative appropriations, to achieve that end. The justice center could then be used as a template toward establishing others. To the extent possible, the state should provide the financial incentives necessary to encourage local units of government to adopt and incorporate the concept.

14. Justice Center Boundaries Should be Permitted to Extend Beyond Current Circuit Court Boundaries

The Commission recommends that legislation be enacted authorizing the boundaries of justice centers, including the prototype, if so fashioned, to extend beyond the limits of present judicial circuit boundaries so that multiple circuits, or parts thereof, may join together in conducting judicial work and that it also create a justice

center boundary commission to make recommendations, from time to time, regarding the counties to be included in each justice center. All judges and clerks of those counties would conduct judicial work in that justice center.

There are wide variations in the population of the state's judicial circuits and in the workload of the judges in each circuit. These variations produce inefficiencies and inhibit the maximum use of judicial resources. Judge-transfer programs have attempted to deal with this difficulty, but the programs present problems of their own--lawyers seeking change of judge because a transferred judge is unknown to them, judges unduly burdened by the transfer, etc. The Commission believes that transfer programs, while helpful, are insufficient to deal with the major problem--the need to provide an adequate number of judges to handle the workload of a court efficiently and effectively. It believes that the justice center model offers a better solution if multiple circuits, or parts thereof, were allowed to join together in one justice center and were encouraged to do so when factors of efficiency and effectiveness compel that it be done. In this way, the boundaries of a center's judicial work would be defined by such factors as population demands rather than present circuit court lines.

This change from circuit boundary to multiple circuit boundary would not necessarily upset the political balance of a circuit, as judges and clerks could still be selected or elected as required by law. The only required change will be the courthouse in which their work would be done.

15. The Salary Disparity that Exists Between Associate Circuit Judge and Circuit Judge Should be Substantially Reduced

The Commission recommends that the Missouri Salary Commission set the compensation of associate circuit judges to a level that substantially reduces the salary disparity that presently exists between associate circuit judges and circuit judges.

The Commission heard a great deal of testimony from associate circuit judges and circuit judges regarding Missouri's two-tiered judiciary and the advantages and disadvantages of changing to a one-tiered system. The issues and proposals were multi-faceted and complex, involving such matters as workload, salary, staff, the ability to vote on local rules, and status. The issues had fiscal consequences and affected the way, and

by whom, judicial work would be conducted. The issues had the potential to alter the way in which judges would be elected throughout the state and their terms of office. Throughout its deliberations on the various proposals, the Commission focused on its charge: Would the change suggested benefit the citizens of the state of Missouri? This ultimately led the Commission to decide that it could not recommend change to a one-tier system.

The Commission does, however, believe that the pay disparity between associate circuit judges and circuit judges is too great and should be substantially reduced since associate circuit judges are no longer judges of limited statutory jurisdiction and can be, and have been, assigned to hear jury trials and other matters formerly within the exclusive jurisdiction of circuit judges. Since associate circuit judges are doing a large amount of what previously was considered "circuit judge work," they ought to receive compensation reflective of that fact.

16. Missouri Should Gradually Move to a State-Wide System of Appointed Circuit Clerks

The Commission recommends that the General Assembly enact legislation providing that all circuit clerks be appointed and providing a process to move toward the eventual condition that each circuit have only one circuit clerk who is appointed to that position by the court en banc of the circuit. The Commission further recommends that the title of the position be changed to "circuit court administrator" to reflect the administrative duties that person will have overseeing the business and staff of the circuit. Inasmuch as this recommendation, if implemented, would lead to a reduction of the number of circuit clerks that exist in many circuits and could be disruptive to existing circuit clerks, the Commission further recommends that the enabling legislation provide that any person serving as a circuit clerk on January 1, 1997 shall be retained as part of the transition to a circuit court administrator system.

The Commission received some testimony opposed to this recommendation and recognized that previous attempts to change the office of circuit clerk into an appointive one state-wide has been met with substantial resistance. Yet, on balance the

Commission believes that the change is highly desirable and important to the courts and citizens of the state of Missouri. The position is a professional one, requiring the service of persons skilled in court administration. Circuit clerks ought to be interviewed and selected by the persons in the best position to decide their competency for running a smooth and efficient court--the judges of that court--and compensated appropriately for that competency. Further, job security ought to be a function of meritorious service--not, politics. A support staff whose loyalty lies directly with the judges serves the public interest. The courts will be run best if all the participants are members of the same team.

The Commission believes that the interests of the average citizen will be best served by moving gradually to this new appointive system. It, therefore, recommends that elected circuit clerks be retained in office until they retire or otherwise leave office. In this way, the courts can benefit from and build upon their knowledge and experience. Accordingly, the Commission recommends that any elected circuit clerk serving in that position on January 1, 1997 be retained in that position, and in single-county circuits, that person shall become the circuit court administrator. In multi-county circuits, each circuit clerk shall continue to serve as he or she did prior to January 1, 1997 and, upon

a circuit clerk vacancy in the circuit, the court en banc shall appoint a circuit clerk of the circuit to also administer the courts of the county in which the vacancy occurred. The court en banc shall designate that circuit clerk a circuit court administrator at an appropriate salary level for the added responsibility. In addition, the Commission recommends that all circuit court administrators be considered employees of the circuit court covered by the Circuit Court Personnel System established by Administrative Rule 7 of the Supreme Court of Missouri.

There is a complicating factor that the General Assembly should consider. Chapter 59 of the Revised Statutes of Missouri provides that a circuit clerk may serve ex-officio as county recorder of deeds. These combined offices presently exist in seventy-seven Missouri counties. If Missouri moves to a system of circuit court administrators, then those counties will need a county recorder of deeds. The Commission recommends that the optional system contemplated in Chapter 59 be retained. However the Commission recommends that the position of county recorder of deeds, instead of being combined with the circuit clerk, be combined with some other county office, preferably the county assessor.

The Commission strongly urges the General Assembly to provide the leadership necessary to accomplish these recommended changes. It will enable Missouri courts to better serve the needs of the administration of justice, and to realize one of the greatest benefits to our citizens--centralized filing, first at the county level and ultimately at the circuit level.

17. Child Support Collection Should be Moved From the Office of the Circuit Clerk and Placed in the State Division of Child Support Collection

The Commission recommends that circuit clerks be relieved of the obligation to collect, disburse and keep records regarding child support.

Under Missouri law, at any time, a court may upon its own motion, or upon the motion of either party, name the circuit clerk "trustee" for purposes of receiving, accounting for, and disbursing monies relating to child support and maintenance. Additionally, the court must do so upon the entry of an administrative order filed by the Division of Child Support Enforcement (DCSE), in all cases in which a court order

exists where an assignment of support has been made to the state (AFDC), or where support enforcement services are being provided by the Division of Child Support Enforcement (Non-AFDC). As trustees, clerks are required to maintain records that reflect accurate and complete financial records of transactions that occur in each trusteeship.

This is a formidable task involving not only record keeping, which requires data entry into an automated system for each account, but collection, deposit, remittance of support payments, and responses to inquiries by persons and agencies questioning the adequacy and timeliness of payments made and received. It is labor-intensive and time-consuming. The following table reflects the magnitude and growth of this responsibility.

	Open Accounts	# of Payments	$ Collected
FY85	103,137	684,236	$80,000,000*
FY95	327,243	2,023,793	305,815,258
Increase	224,106	1,339,557	225,815,258
%	217.3	195.8	282.3

* Estimated-FY86 was the first year data is available.

In the Commission's view, it is evident that these responsibilities are overburdening the judicial department with executive department obligations. It, therefore, recommends that the General Assembly place the circuit clerks' record-keeping, collection, and disbursement duties in the Division of Child Support Enforcement (DCSE), the division which is presently responsible for coordinating a variety of child support services.

18. Compensation of Retired Judges Serving as Senior Judges

A. Senior Judges Should Receive the Same Rate of Pay as Active Judges

The Commission recommends that the General Assembly provide that senior judges be paid the same hourly rate of pay as active judges of the same office from which the judge retired. At the present time a person assigned as a senior judge pursuant to Section 26 of Article V of the Missouri Constitution is entitled to receive the current rate of daily pay of an active judge of the same office from which the judge retired, less retirement compensation. V.A.M.S. Section 476.682. The amount they are entitled

to be paid approximates one-half of what an active judge would receive for the same work.

The Commission believes that providing that senior judges be paid the same hourly rate of pay as active judges has many advantages. First, it would serve to encourage additional retired judges to serve as senior judges. This additional service is important because a lack of judicial resources is a growing concern, and more extensive use of senior judges would alleviate the problem. Substantial savings would also result from their use since senior judges do not have a courtroom or support personnel, both of which increase the cost of a judge's service several-fold. In addition, the use of senior judges generally avoids transportation costs. Further, local lawyers more readily accept senior judges because they have practiced before them in the past. Also, senior judges are typically the most experienced jurists and are capable of handling extremely complex matters. Finally, Missourians should not expect senior judges to work for less than the value of their services. It is unfair to pay them less than the level and quality of their service demands.

Although senior judges should be paid at the same hourly rate as active judges,

their total compensation including retirement pay should not exceed the annual salary of an active judge of the same office. In this way, senior judges will receive an amount that more fairly compensates them for their work, but will not receive more total money from the State than active judges.

B. The General Assembly Should Appropriate Sufficient Funds Each Year to Provide the Funds Necessary to Pay Senior Judges

The General assembly has not appropriated sufficient funds to pay for the current rate of daily pay which approximates one-half of an active judge's daily salary. For example, in the year 1994, the amount of billed services for senior judges that remained unpaid was $84,890.00 and in the year 1993, the amount of billed services remaining unpaid was $157,190.00. We can and should do better than this. The Commission urges the General Assembly to remedy this situation by appropriating sufficient funds to pay senior judges for their services as outline above. Many fine senior judges were not paid what the statute allowed because there was not sufficient money appropriated for this to be done. The Commission recommends that the money for the suggested pay for senior judges should be allocated from revenue and appropriated so that they are paid

for their services.

To facilitate the implementation of this recommendation, the Commission recommends that the Missouri Supreme Court annually estimate and request the amount needed to pay senior judges for their services pursuant to V.A.M.S. Section 476.682. It further recommends that the executive and legislative branches of government support the appropriation.

19. The Political Party Affiliation of a Candidate for Judicial Office Should not Appear on the Ballot or in Electioneering Materials

The Commission recommends that judges who are elected be required to run without disclosure of political party affiliation.

The age-old debate is whether judges should be appointed or elected. On the one hand, it is argued that running for election is unseemly--that judges may be compromised by the process. On the other hand, it is argued that the appointive process removes judges from the people. The people should have a say in who administers justice

in their community. The Commission believes that the use of non-party label elections offers a compromise that recognizes both interests.

Non-party label elections are not new to Missouri. They are used in school district elections and in many municipalities throughout the state. They were originally considered strange, but over time, they have become an accepted and even favored method of electing certain public officials. Specifically, the candidates run in a primary without democrat, republican, independent, or other party affiliation or label. The two candidates receiving the most votes then run against each other in a general election; also, without party designation.

The Commission recognizes that this recommendation will not be overwhelmingly embraced by those from counties or circuits where one political party is dominant. It should, however, be embraced by those who favor elections on the merits, rather than elections based primarily upon political considerations.

ATTACHMENTS

EXECUTIVE ORDER
93-31

WHEREAS, the Judicial Branch serves the people of Missouri as a protector of individual rights and liberties and as the arbitrator of disputes; and

WHEREAS, Article V of the Missouri Constitution and related statutes provide for the organization and operation of the Judiciary; and

WHEREAS, the periodic review of Article V is appropriate and necessary to ensure that judicial operations continue to be efficient and effective and meet the demands of our modern society;

NOW, THEREFORE, I, Mel Carnahan, Governor of the State of Missouri, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby establish the MISSOURI ADVISORY COMMISSION ON THE ORGANIZATION OF THE JUDICIAL DEPARTMENT. The Commission shall be composed of fifteen (15) members, three (3) of whom shall be appointed by the Governor, three (3) of whom shall be appointed by the Board of Governors of the Missouri Bar, three (3) of whom shall be appointed by the President Pro Tempore of the Senate, three (3) of whom shall be appointed by the Speaker of the House of Representatives, and three (3) of whom shall be appointed by the Chief Justice of the Supreme Court.

THE COMMISSION members will be appointed within sixty days of this Order.

THE GOVERNOR shall designate one of the members of the Commission to serve as chair, and the chair shall call meetings of the Commission. Members of the Commission will serve without compensation but may be reimbursed for reasonable and necessary expenses to the extent that funds are available for this purpose from the Missouri Bar. The Commission may utilize such staff as may be provided by the legislative, executive and judicial branches and the Missouri Bar.

THE COMMISSION shall review, analyze, study, recommend and report upon the constitutional and statutory provisions relating to the Judicial Department, including at least the following:

1. The allocation of judicial personnel and resources and a means of ensuring such proper allocation in the future, including the desirability of a unified trial court of general jurisdiction;

2. The current arrangement of judicial circuits and the means of ensuring a proper arrangement in the future, including provisions relating to venue;

3. The current functioning of the nonpartisan selection system for judges and improvements that should be made in said system, if any; and

4. Any other matters the Commission believes will be of benefit to the Judicial Department, including recommendations related to training, retention, removal and compensation of judges.

THE COMMISSION shall make its report, including any recommendations for constitutional, legislative, executive or judicial action, to the Governor, the General Assembly, and the Supreme Court as soon as is reasonably practicable.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 19th day of August, 1993.

Mel Carnahan
GOVERNOR

ATTEST:

Judith K. Moriarty
SECRETARY OF STATE

EXECUTIVE ORDER
94-13

WHEREAS, by Executive Order 93-31, I established the Missouri Advisory Commission on the Organization of the Judicial Department; and

WHEREAS, that Executive Order provided for three (3) members of the Commission to be appointed by the Governor; and

WHEREAS, it is desirable to increase the number of members on the Commission in order to ensure broad representation of persons concerned with the Judicial Department;

NOW, THEREFORE, I, Mel Carnahan, Governor of the State of Missouri, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby amend Executive Order 93-31 to provide for the appointment of five (5) members of the Commission by the Governor, such appointments to be made as soon as practicable.

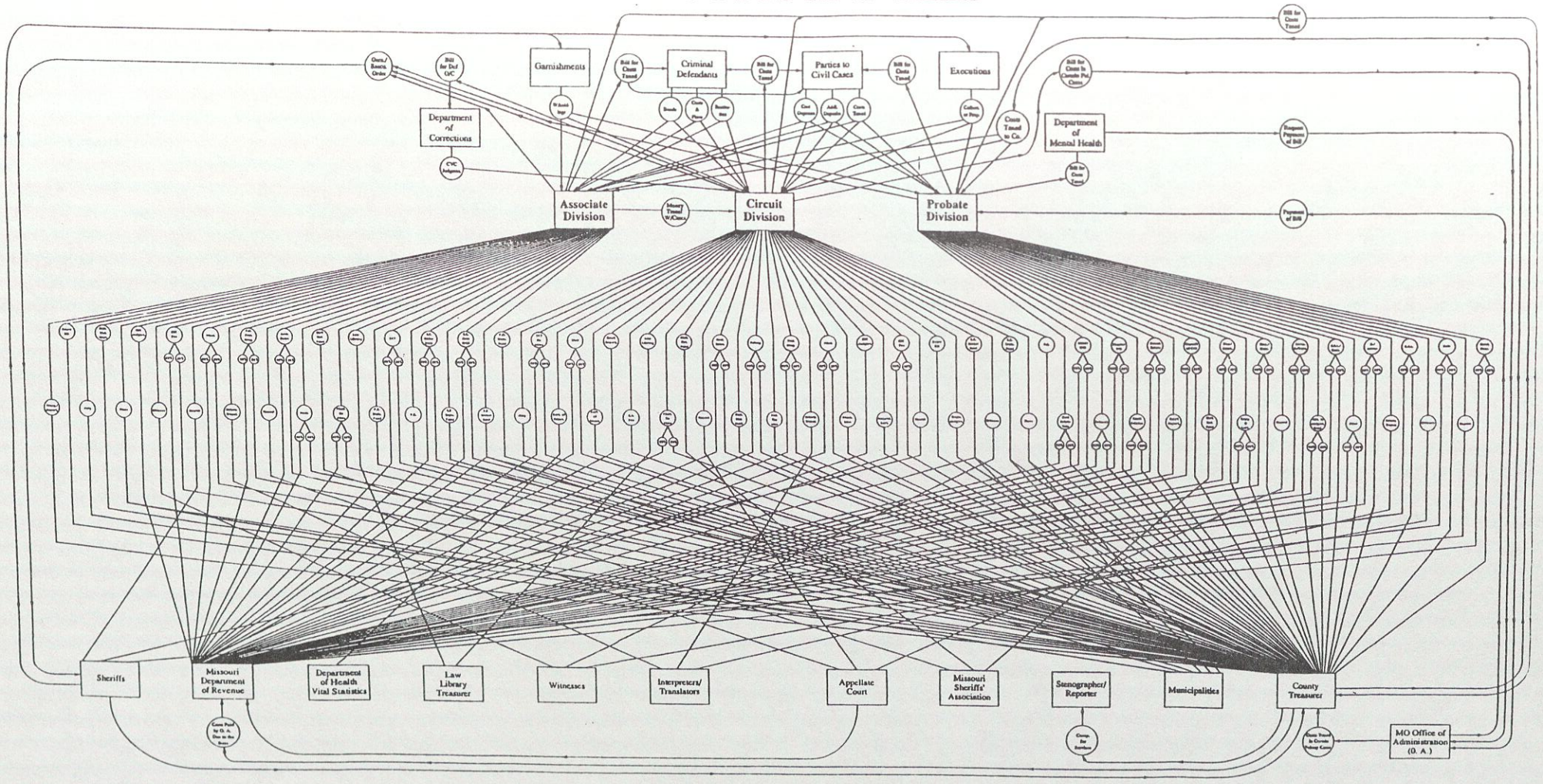
IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 22nd day of March, 1994.

Mel Carnahan
GOVERNOR

ATTEST:

Judith K. Moriarity
SECRETARY OF STATE

COURT COSTS AND FEES



Effective: August 28, 1991